

IN RE PACIFIC REFINING COMPANY

EPCRA Appeal No. 94-1

FINAL DECISION AND ORDER

Decided December 6, 1994

Syllabus

U.S. EPA Region IX appeals an order of the Presiding Officer assessing a civil penalty against Pacific Refining Company (Pacific) for alleged violations of § 313 of the Emergency Planning and Community Right-To-Know Act (EPCRA), 42 U.S.C. § 11023, and the rules implementing EPCRA. Region IX had issued a complaint charging Pacific with twelve counts of failure to file 1989 "Form Rs" reporting Pacific's use of certain regulated chemicals. The complaint sought penalties totalling \$300,000. Following a hearing, the Presiding Officer found Pacific liable on ten of the twelve counts. The Presiding Officer imposed a total penalty against Pacific of \$25,000 (\$20,000 for the first count, and a total of \$5000 for the remaining nine counts). The Region appealed, claiming error in the Presiding Officer's penalty determination.

Held: The Board agrees that the Presiding Officer erred in determining the amount of the penalty, and instead assesses a total penalty against Pacific of \$111,762. First, the Presiding Officer erred by failing to consider the Agency's 1992 Enforcement Response Policy (ERP) in determining the gravity-based penalty applicable to Pacific's violations. Under the 1992 ERP, the appropriate gravity-based penalty is \$24,836 for each of the ten violations, totalling \$248,360. Second, the Board concludes that the record supports downward penalty adjustments totalling 55% of the gravity-based penalty, for a total civil penalty of \$111,762.

Before Environmental Appeals Judges Nancy B. Firestone, Ronald L. McCallum, and Edward E. Reich.

Opinion of the Board by Judge Reich, in which Judge Firestone joined. Judge McCallum filed a dissenting opinion, post p. 20:

U.S. EPA Region IX appeals an order of the Presiding Officer assessing a civil penalty against Pacific Refining Company (Pacific) for alleged violations of § 313 of the Emergency Planning and Community Right-To-Know Act (EPCRA), 42 U.S.C. § 11023, and the rules implementing EPCRA relating to chemical reporting requirements, 40 C.F.R. § 372.30. Under EPCRA § 313 and the implementing regulations, the owners and operators of a facility subject to the requirements of EPCRA § 313(b) are required to submit annually, by July 1, a Toxic Chemical